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WESTMAN CHAMPLIN (MICROSOFT CORPORATION)
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

EXAMINER	
WALSH, JOHN B	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARSTEN SORENSEN

Appeal 2009-000458
Application 10/696,851
Technology Center 2400

Before BRADLEY W. BAUMEISTER, BRUCE R. WINSOR, and BRIAN J. McNAMARA, *Administrative Patent Judges*.

WINSOR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-22, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

> [Appellant's] invention provides a system by which entities interact with one another in a manufacturing channel. The entities (such as a seller and customer) use a messaging system to perform status inquiry and functional processing steps with respect to data stored at the resource management system of the other.

(Abstract). Claims 1, 2, and 6, which are illustrative of the invention and of Appellant's grouping of the claims (Br. 6), read as follows:

> GROUP I (CLAIMS 1, 9, 10, 13-15, AND 17-19).
>
> 1. A communication system for communicating business information from a first business to a second business, the system comprising:
>
> an instant messaging component configured to receive, as an instant message, a business information access request from the second business and generate an output based on the business information access request;
>
> a data store storing business information corresponding to the business information access request; and
>
> a data store accessing system accessing the data store based on the output from the instant messaging component.
>
> GROUP II (CLAIMS 2-5, 8, 16, AND 22).
>
> 2. The communication system of claim 1 wherein the instant messaging component is configured to generate, as an instant message, a response to the business information access request.

GROUP III (CLAIMS 6, 7, 11, 12, 20, AND 21).

6. The communication system of claim 2 wherein the business information access request is a data update request, and wherein the data store accessing system is configured to access the data store by updating the data store based on the data update request.

Claims 1-22 stand rejected under 35 U.S.C. § 102(e) as anticipated by Smith (US 6,901,430 B1; May 31, 2005; filed Mar. 31, 2000). (Ans. 3).

Rather than repeat the arguments here, we make reference to the Brief and the Answer for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

Appellant contends as follows:

As to the claims in claim Group I, Smith does not disclose "an *instant messaging* component configured to receive, as an *instant message*, a business information access request from the second business and generate an output based on the business information access request" (emphases added) as recited in claim 1. (*See generally* Br. 6-8).

As to the claims in claim Group II, Smith does not disclose "the *instant messaging* component is configured to generate, as an *instant message*, a response to the business information access request" (emphases added) as recited in claim 2. (*See generally* Br. 8).

As to the claims in claim Group III:

> Smith neither teaches nor suggests *instant messaging* to perform business data accesses. Nor does Smith teach or suggest updating data in a data store based on such *an instant message* received. Further, Smith neither teaches nor suggests any type of user interface component that allows a user to select a data manipulation feature as part of *an instant message*, which results in the updating or modification or manipulation of data in a receiving entity's data store.

(Emphases added) (Br. 9).

The pivotal issue presented by Appellant's contentions is: Does Smith disclose "instant messages?"

ANALYSIS

We have reviewed Appellant's arguments (Br. 6-9) in light of the Examiner's findings (Ans. 3-7) and explanations responding to Appellant's arguments (Ans. 7-9). We agree with the Examiner's findings and explanations (Ans. 3-9) and adopt them as our own.

For emphasis only, we note that Appellant has failed to demonstrate that the Examiner has erred in giving the terms of the claims their broadest reasonable interpretation in light of the Specification, *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997), without reading limitations from the Specification into the claims, *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). We agree with the Examiner that:

> [T]he term "instant messaging" need not be explicitly recited by Smith '430 in order to anticipate the claims. [*See In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).] Smith '430 discloses the use of "messages" (see Column 3, lines 39-47). The use of the term "instant" is a relative term. Smith '430 discloses "a method and system wherein a consumer is provided **real-time information"** (see Column 2, lines 59-61 -

> emphasis added). In order to provide the information in real-time the messages sent and received must be sent in a rapid manner as to be "instant" to the user since the information received is "real-time" information. Furthermore, there is no claim limitations drawn to steps or structure that indicate that the messages are any different then [sic] messages sent throughout computer systems. The rapid speed of messages sent within a computer system, such as the one of Smith '430, would lead one of ordinary skill in the art to view the messages as being "instant".

(Ans. 7-8).

Appellant has failed to persuade us of error in the rejection of claims 1-22 as anticipated by Smith. Accordingly we will sustain the rejection of claims 1-22.

ORDER

The decision of the Examiner to reject claims 1-22 under 35 U.S.C. § 102(e) as anticipated by Smith is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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